



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards  
Ministry of Housing and Social Development

## Decision

Dispute Codes: OPR, MNR, FF

## Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and utilities as well as to recover the filing fee for this proceeding.

The Landlord served the Tenant with a copy of the Application and Notice of Hearing in person on December 16, 2008. The Landlord claimed at the beginning of the hearing that the Tenant advised her today that she would be unable to attend the hearing due to an emergency with respect to her child and that she would pay December, 2008 and January 2009 rent arrears on January 20, 2009. The Landlord said she told the Tenant that she would be proceeding with the hearing. I find pursuant to s. 89 of the Act that the Tenant was properly served with Notice of this hearing. In the absence of the Tenant or an agent acting on the Tenant's behalf attending to request an adjournment of this matter, the hearing proceeded in the Tenant's absence.

## Issue(s) to be Decided

1. Is the Landlord entitled to end the tenancy?
2. Are there arrears of rent and utilities and if so, how much?

## Background and Evidence

This month to month tenancy started on June 1, 2008. Rent is \$1,350.00 per month payable on the 1<sup>st</sup> day of each month. The Landlord claims that the Tenant is in arrears of rent for December, 2008 and as a result served the Tenant in person on December 4, 2008 with a 10 Day Notice to End Tenancy for Unpaid Rent dated December 4, 2008. The Landlord said that the Tenant has not paid anything since she received the Notice to End Tenancy.

### Analysis

Section 46(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the amount set out on the Notice or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 46(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the rental unit at that time. Consequently, the Tenant would have had to pay the amount on the Notice or apply to dispute that amount within 5 days, or no later than December 9, 2008.

I find that the Tenant has not paid the amount indicated on the Notice and has not applied for dispute resolution. I also find that there was no agreement whereby the Landlord would allow the Tenant to pay the arrears later than the date indicated on the Notice. Consequently, pursuant to section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, which is December 14, 2008.

The Landlord requested and I find she is entitled to an Order of Possession to take effect at 1:00 p.m. PST on January 31, 2009. Given the Landlord's evidence that the Tenant does not dispute that rent is in arrears, I also find that the Landlord is entitled to recover rent arrears for December, 2008 in the amount of \$1,350.00, plus a late payment fee of \$25.00 (pursuant to clause 6 of the tenancy agreement) as well as the \$50.00 filing fee for this proceeding. The Landlord will receive a monetary order as follows:

Rent arrears December 2008:	\$1,350.00
Late payment fee:	\$25.00
Filing fee:	<u>\$50.00</u>
TOTAL:	\$1,425.00

### Conclusion

An Order of Possession effective January 31, 2009 and a Monetary Order in the amount of **\$1,425.00** has been issued to the Landlord and a copy of the Orders must be served on the Tenant. The Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.